

central processing unit for that portion of operating time that is directly attributable to searching for responsive records, and operator/programmer salary apportionable to the search.

(5) *Other charges.* Where a response to a request requires services (including personnel) or materials other than the ones described in paragraphs (c)(1), (2), (3), and (4) of this section, the charge is the full cost of any such services and materials which TVA agrees to provide, but only if the requester has been notified of such cost before it is incurred, or if the request contains a statement accepting responsibility for the cost to be incurred. Such services or materials (provided at TVA's discretion) include:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(d) *Waiver of fees and services provided without charge.* (1) TVA waives or reduces fees otherwise chargeable under this section if TVA determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(2) Except for documents provided in response to a commercial use request, the first 100 pages and the first 2 hours of search time will be provided without charge. Educational and noncommercial scientific institution requesters who seek records for scholarly or scientific research and representatives of the news media are not charged search time.

(3) No fee is charged to any requester if the cost of collecting the fee would be equal to or greater than the fee itself.

(e) *Assessment and collection of fees.* (1) Interest may be charged to those requesters who fail to pay fees charged. Interest may begin to be assessed on the amount billed on the 31st day following the day on which the billing was sent but any interest assessed will accrue from the date of the billing. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) If TVA reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, TVA may aggregate any such requests and charge accordingly.

(3) If TVA determines that the allowable charges a requester may be required to pay are likely to exceed \$250, TVA may require a requester to make an advance payment of an amount up to the full estimated charges if the requester has no history of prompt payment. If the requester has such a history, TVA may notify the requester of the estimated charges and if a satisfactory assurance of full payment is obtained, will not require an advance payment under this provision. The administrative time limits prescribed in §1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(4) Where a requester has previously failed to pay a fee charged in a timely manner (within 30 days of the date of billing), TVA may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (e)(1) of this section and to make an advance payment of the full estimated charges before the agency begins to process a new request or a pending request from that requester. The administrative time limits prescribed in §1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(5) TVA may assess charges for time spent searching, even if TVA fails to locate the records or if records located are determined to be exempt from disclosure.

[52 FR 17939, May 13, 1987, as amended at 58 FR 53656, Oct. 18, 1993]

#### § 1301.3 Waiver or reduction of fees.

(a) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under §1301.2 where TVA determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to TVA, that disclosure of the requested information is

in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees, which shall be made at the same time as the requests for records, shall be considered on a case-by-case basis.

(b) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—TVA shall consider the following four factors in sequence:

(1) The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government.” The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(2) The informational value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(3) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to “public

understanding.” The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester’s identity and qualification—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in paragraph 1301.2(b)(7)) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. The public’s understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. TVA shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is “important” enough to be made public.

(c) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—TVA shall consider the following two factors in sequence:

(1) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. TVA shall consider all commercial interests of the requester (with reference to the definition of “commercial use” in paragraph 1301.2(b)(4)), or

any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(2) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (b) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. TVA shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the "public interest."

(d) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (b) and (c) of this section, as they apply to each record request.

(f) A denial of a request for reduced fees or of a request for waiver of fees, in whole or in part, will be made in writing, will state the reasons for the denial, and will notify the requester of the right to appeal the denial. The appeal process for denial of a fee waiver or reduction of fees shall be identical

to the appeal process for denial of a requested record and shall be subject to the procedures detailed in § 1301.1(c)(2).

[57 FR 23532, June 4, 1992]

### Subpart B—Privacy Act

AUTHORITY: 16 U.S.C. 831-831dd, 5 U.S.C. 552a.

SOURCE: 40 FR 45313, Oct. 1, 1975, unless otherwise noted. Redesignated at 44 FR 30682, May 29, 1979.

#### § 1301.11 Purpose and scope.

(a) The regulations in §§ 1301.11 to 1301.24 implement section 3 of the Privacy Act of 1974, 5 U.S.C. 552a, with respect to systems of records maintained by TVA. They provide procedures by which an individual may exercise the rights granted by the Act to determine whether a TVA system contains a record pertaining to him; to gain access to such records; to have a copy made of all or any portion thereof; and to request administrative correction or amendment of such records. They prescribe fees to be charged for copying records; establish identification requirements; list penalties provided by statute for certain violations of the Act; and establish exemptions from certain requirements of the Act for certain TVA systems or components thereof.

(b) Nothing in §§ 1301.11 to 1301.24 entitles an individual to any access to any information or record compiled in reasonable anticipation of a civil action or proceeding.

(c) Certain records of which TVA may have physical possession are the official records of another government agency which exercises dominion and control over the records, their content, and access thereto. In such cases, TVA's maintenance of the records is subject to the direction of the other government agency. Except for a request for a determination of the existence of the record, when TVA receives requests related to these records, TVA will immediately refer the request to the controlling agency for all decisions regarding the request, and will notify the individual making the request of the referral.